In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 373

NATIONAL TRAILER CONVOY, INC., APPELLANT

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

MOTION TO AFFIRM

Pursuant to Rule 16, paragraph 1(c) of the Rules of this Court, the United States of America and the Interstate Commerce Commission move that the judgment of the district court be affirmed.

STATEMENT

This is a direct appeal from a final judgment of a three-judge district court, which affirmed a Commission holding that appellant's operating authority does not permit it to transport sectional prefabricated

homes (J.S. 34). Appellant's certificates authorize it to transport "trailers designed to be drawn by passenger automobiles" (J.S. 28). The Commission consistently has held that, even though the motive power is furnished by light truck rather than by automobile, such authority permits the transportation of many types of trailers mounted on undercarriages which are connected to the motive power by a "hitchball" device (J.S. 19-20, 29).[1]

Appellant filed with the Commission an application for authority to transport commodities described as "portable buildings" (J.S. 26), including "shrimp restaurants," coin-operated laundries, "egg factories," motels and "sectionalized manufactured homes" (J.S. 37-40). The latter, which are the subject of this litigation, are portable homes made and transported in two units, "each completely finished, one containing living room and bedroom and the other containing kitchen, bath, and other appurtenances" (J.S. 40). All these products are tendered by the manufacturer with undercarriages attached and are pulled by hitchball connection (*id.*, 11-12, 15-16).

During the hearing, appellant moved to withdraw its application, alleging that no new authority was necessary because its existing authority covered these structures (J.S. 26). The Commission ruled that the "shrimp restaurants," laundries, "egg factories" and motels constituted "trailers" as that term was used

---

[1] The two methods of connecting a trailer to the motive power are by hitchball or by a so-called "fifth wheel" (J.S. 19-20). The former method is used for smaller trailers and the latter for large freight trailers.

in appellant's existing certificates, but that the sectional homes did not (J.S. 30-31, 34). It pointed out (1) that, unlike the other structures, the sectional homes were made as half-units, designed to be put together after delivery either by attaching the halves side-by-side or placing one on top of the other to form a two-story home; and (2) that these products are not sold to customers as mobile homes, but as stationary houses (J.A. 30-31). The Commission further held that such sectional homes could be transported by the protestants Whitehouse Trucking, Inc. and Pre-Fab Transit Co., which possessed specific certificate authority to transport prefabricated buildings, complete or in sections; and it denied appellant's application for a new certificate of public convenience and necessity to carry sectional homes, on the ground that appellant had not shown that the protestants could not transport the product (J.S. 31-33).

The three-judge district court affirmed the Commission's order. Noting that the courts will overturn the Commission's interpretation of its own certificate only if such interpretation is clearly erroneous (J.S. 45), the court held that the Commission's ruling that sectional homes are not "trailers" was reasonable and not clearly erroneous, since such homes are "not built in single units and * * * [are] not intended to retain any mobility" (J.S. 47). Upon petition for rehearing, the court (1) held that substantial evidence supports the Commission's conclusion that the homes do not retain mobility after initial delivery (J.S. 48); and (2) declined to receive additional evidence on this point, pointing out that if the appellant believed the

Commission erred because "important evidence" was not brought to its attention, the appropriate remedy was to make a new application to the Commission (J.S. 49).

ARGUMENT

This appeal presents only two narrow questions: (1) whether the Commission was clearly erroneous in ruling that appellant's certificate authority to transport "trailers designed to be drawn by passenger automobiles" does not cover sectional prefabricated homes; and (2) whether substantial evidence supports the Commission's finding that such homes were intended for permanent installation. Neither of these issues presents any substantial question; both were correctly decided by the court below; and there is no occasion for plenary review.

1. In construing the phrase "trailers designed to be drawn by passenger automobiles" in appellant's certificate, the Commission gave these words a practical interpretation designed to limit transportation thereunder to relatively complete and self-contained units that are intended to retain their mobility after transportation. As the Commission here indicated (J.S. 31), the critical question is whether the products are "sold to customers as mobile units designed to be drawn upon the highway as trailers [or] are merchandised as stationary, factory-built houses." The word "trailers" does not automatically cover every kind of structure that is mounted on an undercarriage; it is the character of the structure and not

the form in which it is tendered to the carrier for transportation, that determines whether it is a "trailer" within the foregoing certificate authority.

The district court pointed out (J.S. 45-46) that in the present case the Commission applied that distinction, since it "has differentiated between shrimp boats, egg factories, coin-operated laundries, and motel units on the one hand, all of which are single units and retain mobility after delivery [and therefore are 'trailers'], and sectionalized homes, on the other hand, which are not single units and which are permanently located after delivery [and therefore are not 'trailers']." The validity of the Commission's conclusion is further shown by the fact that the two protesting carriers have specific authority to transport prefabricated buildings, either complete or in sections; the existence of such certificates strongly indicates that appellant's more generalized authority does not cover such products. The Commission's interpretation of its own certificates is controlling upon the reviewing courts unless clearly erroneous (cf. *Nelson Inc.* v. *United States*, 355 U.S. 554, 558), and the district court was fully justified in sustaining the Commission's interpretation here.

2. The court below also properly upheld, as having adequate evidentiary support, the Commission's finding (J.S. 31) that the sectionalized prefabricated homes were intended for permanent installation. Thus, as the Commission noted (J.S. 31), a brochure published by one of the shipper-manufacturers (Ex. 5) stated that such homes embody most of the architectural appointments of conventional housing and

are manufactured to conform to most building codes. Moreover, the brochure pictured such homes upon an apparently permanent site with a paved driveway. In addition, although the manufacturers of the other types of structures involved in this proceeding testified that those products retain their mobility after installation (Tr. 56-57, 96-97, 102, 116), neither the manufacturers nor the other carriers of sectional prefabricated houses pointed to any similar feature of that product (see Tr. 117-139, 146-152, 171-183). There is no occasion for a second plenary review of this narrow factual determination.

CONCLUSION

For the foregoing reasons, we respectfully submit that this appeal presents no substantial question, and that the judgment of the district court should be affirmed.

RALPH S. SPRITZER,
Acting Solicitor General.

DONALD F. TURNER,
Assistant Attorney General.

ROBERT B. HUMMEL,
LAWRENCE R. VELVEL,
Attorneys.

ROBERT W. GINNANE,
General Counsel,

THOMAS H. PLOSS,
Attorney,
Interstate Commerce Commission.

AUGUST 1965.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1965 784848 133